?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 14.09.2017

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

+H.C.P.(MD) No.1150 of 2018

#Muthukumar ... Petitioner

vs.

$1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai ? 600 009.

2.The District Magistrate and District Collector,
O/o.District Magistrate and District Collector,
Dindigul District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order of the Respondent No.2 in Detention order No.62 of 2018 dated 29.07.2018 and quash the same and direct the respondents to produce the body or person of the detenu by name Muthukumar S/o.Rajan aged about 51 years, now detained at Madurai Central Prison before this Court and set him at liberty.

!For Petitioner : Mr.R.Alagumani
^For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

:ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the detenu. He was detained by the second respondent by his order in Detention order No.62 of 2018 dated 29.07.2018, holding him to be a Bootlegger, as contemplated under Section 2(b) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.
4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 29.07.2018. The petitioner made three representations. Third representation was given on 31.07.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 29.08.2018 and remarks were received on 11.09.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner-s representation on 05.10.2018.

6.It is the contention of the petitioner that there was a delay of 17 days in considering the representation by the Minister for Electricity and Prohibition and Excise after the Deputy Secretary dealt with the same, of which 8 days were Government Holidays, hence, there was inordinate delay of 9 days in considering the representation.

7. In Rekha vs. State of Tamil Nadu, reported in 2011 (5) SCC 244, the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In Sumaiya vs. The Secretary to Government, reported in 2007 (2) MWN (Cr.) 145, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.
9. In Tara Chand vs. State of Rajasthan and others, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 9 days in considering the representation by the Minister for Electricity, Prohibition and Exercise Department. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in Detention order No.62 of 2018 dated 29.07.2018, passed by the second respondent is set aside. The detenu, namely, Muthukumar S/o.Rajan aged about 51 years, is directed to be released forthwith unless his detention is required in connection with any other case.

To:

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai ? 600 009.

2.The District Magistrate and District Collector,
O/o.District Magistrate and District Collector,
Dindigul District.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.